



May 29, 2020

Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Brent Borland, 18 Cr. 487 (KPF)

Dear Judge Failla,

Due to a conflict between Mr. Borland and his lawyers from Federal Defenders, I was appointed by the Court on January 6, 2020. By that time, the case had been pending since May 2018. I was appointed after Mr. Borland had pled guilty to the indictment without a plea agreement. The parties had proposed, and the Court had endorsed, a sentencing schedule by which the parties would first brief a complex guidelines issue related to loss under USSG § 2B1.1. Once the Court ruled on this issue as a matter of law, the parties then were going to determine whether agreement was possible on remaining guideline issues and potential relevant conduct, and when sentencing could proceed.

By the time I was appointed, the § 2B1.1 issue was briefed. However, the Court agreed to grant me time to learn the case and to decide with Mr. Borland how to proceed. The potential options included relying on the prior briefing, supplementing the briefing with my own submission, or pursuing some other course, such as seeking to withdraw Mr. Borland's guilty plea. Since that time, the COVID-19 pandemic hit, the Court granted me more time, and the Court appointed Christopher Madiou as my co-counsel.

I write now, after extensive discussions with Mr. Borland and Mr. Madiou, to notify the Court that (1) Mr. Borland will not move to withdraw his guilty plea, and (2) that we will be filing a supplemental submission on the § 2B1.1 issue on or before June 12, 2020.

I appreciate the fact that the Court has been more than generous in giving me time to learn the case and determine the appropriate path forward. As the Court knows, this is an exceedingly complicated case. Mr. Madiou and I have worked diligently to understand the intricate facts involved, study hundreds of documents and other discovery, research the law in this area, all while conferring with our client exclusively over the phone, which has its limits. We have recently become aware of facts and documents that may be relevant to the §2B1.1 issue, which we are obligated to investigate. Nevertheless, at this time we feel confident that a submission can be filed within two weeks.

We have discussed this schedule with the government, and jointly propose that the currently scheduled status conference on June 8 be adjourned until briefing on this issue is complete. The government may seek an reasonable amount of time to respond to our submission.

Thank you for your consideration.

Respectfully submitted,

/s/

Florian Miedel
Attorney for Brent Borland

Cc: All Counsel